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JJG.Jr: 03-04

Paper No: 5

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MAR 12 2004

In re Application of : **OFFICE OF PETITIONS**
Beiswenger, et al. :
Application No. 10/080,746 : DECISION ON PETITION
Filed: 22 February, 2002 :
Attorney Docket No.: H159 1010 :

This is a decision on the petition, filed via 13 May, 2003, and resubmitted via FAX on 5 March, 2004, to revive the instant nonprovisional application under the provisions of 37 C.F.R. §1.137(f).

The Office regrets the delay in addressing this matter.

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in a foreign country on 22 February, 2003. Petitioner rescinded the non-publication request on 10 March, 2003, however, Petitioner failed to Notice the Office of the action.

Thus, Petitioner alleges that he unintentionally failed to notify the U.S. Patent and Trademark Office of this filing of the subject application in a foreign country within 45 days of that filing.

In view of the above, this application became abandoned pursuant to 35 U.S.C. §122(b)(2)(B)(iii) and 37 C.F.R. §1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 C.F.R. §1.137(f) must be accompanied by:

- (1) the reply--which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 C.F.R. §1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 C.F.R. §1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. §122(b)(2)(B)(iii) and 37 C.F.R. §1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. §122(b)(2)(B)(I) has been rescinded. A Notice Regarding Rescission of Nonpublication Request, which sets forth the projected publication date of 17 June, 2004, accompanies this decision.

This application is being forwarded to Technology Center Art Unit 2100 for examination in due course.

Inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.



John J. Gillon, Jr.
Senior Attorney
Office of Petitions

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request